



भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 18]

नई दिल्ली, शनिवार, मई 22, 1993/ज्येष्ठ 1, 1915

No. 18]

NEW DELHI, SATURDAY, MAY 22, 1993/JYAISTHA 1, 1915

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii) PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र प्रशासनों को छोड़कर) केन्द्रीय अधिकारियाँ द्वारा जारी किए गए आदेश और अधिसूचनाएँ
Orders and Notifications issued by Central Authorities (other than Administrations of Union
Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 7 मई, 1993

आ. अ. 88.—लोक प्रतिनिधित्व अधिनियम,
1951 (1951 का 43) की धारा 106 के अनुसरण में,
निर्वाचन आयोग वर्ष 1991 की निर्वाचन अर्जी सं. 3 में
मध्य प्रदेश उच्च न्यायालय, इन्दौर बेंच, इन्दौर के तारीख
17 दिसम्बर, 1992 के आदेश को एतद्वारा प्रकाशित
करता है।

[सं. 82/म. प्र./खो. स./3/91/93]

आदेश से,

घनश्याम खोहर, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 7th May, 1993

O.N. 88.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election

Commission hereby publishes the order of the High Court of Madhya Pradesh, Indore Bench, Indore dated 17th December, 1992 in Election Petition No. 3 of 1991.

[No. 82/MP-HP/3/91/93]

By Order

GHANSHYAM KHOHAR, Secy.

ELECTION PETITION NO. 3/91

Narayan Singh

vs.

Digvijay Singh and others.

ORDER

By this election petition under sec. 81 of the Representation of People Act, 1951 (for short 'the Act') the petitioner who is on elector, calls in question, the election of respondent No. 1 Shri Digvijay Singh from Lok Sabha constituency no. 32, Rajgarh (M.P.) in the 10th General Election to Lok Sabha held in the year 1991.

2. The respondent no. 1 by his application dt. 14-2-92 (I.A. No. 2/92) under sec. 83(1) of the Act, has raised a preliminary objection regarding maintainability of this petition stating that the petitioner has not properly verified the annexure enclosed with the petition, as required by law and this defective verification is fatal to the maintainability of this petition, citing Ann. 6 as an example, of such faulty verification.

3. The petitioner by his reply dated 6-3-90 denying the allegation of improper allegation made in general, so far as Ann. no. 6 at page 63 of the petition, is concerned, has tried to explain the same by saying that it was due to typing error, caused by misplacement of carbon paper, which has resulted in an omission of the first line of verification being typed. Secondly it is contended that the document not being an integral part of the petition, but merely certified list of counting agents of respondent No. 2, is only piece of evidence in support of averments made in para 57 of the petition and in any case, it is a curable defect, not fatal to the maintainability of the petition.

Without going into the generality of the preliminary objection and confining myself to the document Ann. 6, as indeed the arguments advanced by the learned counsel have also been confined, I propose to dispose of the application I.A. No. 2/92 and decide the preliminary objection as raised by respondent No. 1, by this order. It may be noted that although other respondents have also been served Shri Yadav Advocate appeared for respondent No. 2 but the arguments have been advanced by Shri Mathur, senior Advocate with Shri Fandya for the respondent No. 1 and Shri Maheshwari for the petitioner, who have been heard.

5. The first question that arises for consideration is whether Ann. 6 is an integral part of the petition? While Shri Mathur all along maintained that it is an integral part of the petition, Shri Maheshwari contended—it is not, considering the nature of the document.

6. Let us first see in what context the document Ann. 6 has been used by the petitioner. Admittedly Ann. 6 is a certified copy of the list of polling agents of respondent No. 2, who has lost the election to respondent no. 1, whose success at the election by a narrow margin of 1470 votes is attributed to numerous irregularities, illegalities and 'Hera Feri' possibly meaning thereby tampering or manoeuvring during the course of counting committed and indulged in by the respondent No. 1 and other officers such as the counting officers, the Assistant Returning officers and the Returning officer as averred in paragraphs 12 and 13 of the petition.

7. The petitioner has challenged the election of respondent No. 1 inter alia on the grounds of illegalities and irregularities in the process of counting and improper reception, refusal or rejection of votes, reception of void votes and mixing valid votes polled in favour of respondent No. 2, in the bundles of votes polled in favour of respondent No. 1. It is in this back-drop of allegations that the certified list of counting agents Ann. 6 has been filed by the petitioner. Admittedly it is filed in support of averments made in paras 31, 32 and 37 of the petition, and para 37 itself runs into seven typed sheets.

8. The allegations of illegal reception and rejection of votes mixing of valid votes polled by respondent No. 2 in the bundles of respondent No. 1 are founded on the details and particulars as observed by the counting agents of respondent No. 2.

9. The very foundation of the allegations as made by the petitioner in the above numbered paras is the observation of counting agent as noted by them viewed in this context, the document Ann. 6 cannot be treated as mere piece of evidence to be tendered at the trial, it is the corner stone of the petitioner's case in support of the allegations, illegal reception, rejection and mixing of votes. It undoubtedly forms an integral part of the petition.

10. Turning to the case law cited by Shri Maheshwari learned counsel for the petitioner who referring to para 32 of F.A. Sapa vs. Singora (A.I.R. 1991 SC) 1557, submitted that annexure 'C' cannot be treated as an integral part of the petition. Shri Mathur learned senior counsel has also relied upon this case. As would be clear from reading para as a whole, the Supreme Court has pointed out as follows : "Much would therefore, depend on whether the schedule or annexure was an integral part of the election petition or not; if the former, failure to serve it alongwith the petition to the returned candidate would be fatal but not

so in the later case." In the context of averments made in para 37, this document Ann. 'C' has been held to be an integral part of the petition. The Supreme Court referring to earlier decisions in Sahodra Bai's case (A.I.R. 1988 S. C. 1079) and Sasidharan's case (A.I.R. 1990 S. C. 924) reiterating the principle held as follows : "that if a document forms an integral part of the election petition failure to supply the copy thereof alongwith election petition is fatal and it is only in the case when a document does not form integral part of the election petition but is merely referred to in the petition and filed in the proceedings as evidence or any fact failure to supply a copy thereof will not prove fatal." Explaining this point the Supreme Court has held as under :

"Therefore the maintainability of an election petition, in the context of the point on hand will depend on whether the schedule or annexure to the petition constitutes an integral part of the election petition or not. If it constitutes an integral part it must satisfy the requirement of Section 81(3) and failure in that behalf would be fatal."

11. Shri Maheshwari learned counsel for the petitioner argued that even if ann. 6 is held to be an integral part of the petition, its contents having been incorporated in the petition (para 37), it fulfils the requirements of law under sec. 81(3) of the Act. Reliance has been placed on para 12 of Sahodrabai's case (supra). In Sahodrabai's case a pamphlet was filed as annexure to the petition and it was contended that since the pamphlet was the annexure to the petition, it was not only necessary to sign and verify it, but it should have been treated as a part of the election petition itself and a copy is served upon the respondent. The English translation of this pamphlet was reproduced in the petition and it could therefore be said that the averments with regard to the pamphlet were themselves a part of the petition and therefore, the pamphlet was served upon the respondent although in the translation, not in original. As is evident from following this pamphlet was treated merely as evidence in the case and not held to be an integral part of the petition but only evidence of those averments and in proof thereof. As already extracted and noted above from Sapa's case the question whether the document forms an integral part of the question petition, will have to be decided on the basis of facts pleaded in each case and the context in which document is used or referred to. In the case at hand Ann. 6 has been held to be an integral part of the election petition.

12. Reading para 37, as urged by the petitioner's counsel it would be seen that while it does not make a reference to Ann. 11 to 102 there is absolutely no mention of Ann. 6 in this para commencing from page 27 of the petition and concluding on page 34 thereof.

13. In face of the compandious facts and Anns. from 11 to 106 running in as many as seven typed sheets, it is no part of the duty of the respondent to wade through entire record in order to find out which is the correct copy as has been pointed out by the Supreme Court in Rajendra Singh vs. Smt. Usharani (A.I.R. 1984 S. C. 956).

14. The submission that the document Ann. 6 as incorporated in para 37, would meet the requirement of law, as made by Shri Maheshwari, cannot be accepted.

15. Coming to the verification on the document Ann. 6 it reads as follows :

"knowledge that this annexure is a certified true copy obtained from the office of Returning Officer Rajgarh constituency and the contents therein are true copies of the original.

Verified on 29th July 1991 at Jabalpur.

Sd/-
PETITIONER."

16. Too obviously it is no verification in the eye of law. The explanation offered by the petitioner in this behalf is too naive to be accepted.

17. Shri Mathur for the respondent No. 1 contended that the document Ann. 6 being an integral part of the petition, non-service of the same is fatal to the maintainability of the petition. Placing reliance on Sashidharan's case (A.I.R. 1990 S.C. 924) and the same principle is reiterated in F.A. Sapa's case (supra).

18. Learned counsel for the petitioner placing reliance upon Bhikaji Keshao Joshi and another vs. Brijlal Nandlal Biyani and ors (A.I.R. 1955 S.C. 611), Murarka Radhey Shyam Ram Kumar vs. Roopsingh (A.I.R. 1964 S. C. 1546) and Rohiteswar Saikia vs. Tonu Konwar and Ors. (A.I.R. 1990 S.C. 41), submitted that the defect in verification is curable.

19. In Bhikaji Keshao Joshi (supra) the defective verification was as regards the date of verification. Such is not the position obtaining in the case at hand. In Radheshyam Murarka's case, the defect in verification was, as can be seen from para 14 of the judgment to the time and place of verification which could be remedied. Such is not the position in the instant case. In Rohiteswar Saikia's case from Gauhati High Court the question before the Judge of the Gauhati High Court was, as is evident from the opening para of the order, regarding striking out pleadings contained

in certain paras of the election petition on the ground that they had not been verified. This case, therefore, does not help the petitioner.

20. Shri Maheshwari learned counsel referred to paras 16 and 17 of Sashidharan's case (supra) and urged that it was not even necessary to supply the copy thereof. Reading the judgment as a whole, it would be seen that the Supreme Court even considering the implications of allegations made in the petition has held that video cassette referred to in the pleadings in regard to the alleged assistance for the furtherance of prospects of the allegation of the first respondent held the video cassette as an integral part of the petition. (See paras 21 and 22 of the judgement in Sashidharan's case).

21. For the foregoing reasons the application (I.A. No. 2/92) deserves to be allowed. It is accordingly allowed. The preliminary objection regarding maintainability of the petition as raised by the respondent No. 1 is upheld. Consequently the petition is dismissed with costs. Counsel's fee Rs. 2500, if certified.

Sd/- V. D. GYANI

JUDGE

17-12-92.

SCHEDULE OF COSTS

Particulars	Appliant	Respondent
	Applicant	Non Applicant
	Rs. np.	Rs. np.
Court fee on Memo of Appeal and Application	26.00	3.50
Court fee on power of attorney	5.00	15.00
Court on exhibits
Court fee on process	36.00	..
Counsel's fee on Rs.	Certificate not filed	
Fee for preparation of		
Paper Book		
Total :	67.00	18.50

नई दिल्ली, 5 मई, 1993

आ. अ. 89.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग, 1991 की निर्वाचन शर्तों सं. 5 में मध्य प्रदेश उच्च न्यायालय, इन्दौर बेंच, इन्दौर के तारीख 18 दिसम्बर, 1992 के आदेश को एतद्वारा प्रकाशित करता है।

[सं. 82/म. प्र.-लो. स./5/91/93]

आदेश से,
घनश्याम खोहर, सचिव

New Delhi, the 5th May, 1993

O.N. 89.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the order of the High Court of Madhya Pradesh, Indore Bench, Indore dated 18th December, 1992 in Election Petition No. 5 of 1991.

[No. 82/MP-HP/5/91/93]

By order,

GHANSHYAM KHOHAR, Sery.

ELECTION PETITION NO. 5/91

Lalit Jain

Vs.

Smt. Sumitra Mahajan

ORDER

By this election petition under sec. 81 of the Representation of People Act, 1951 (for short 'the Act') the petitioner who

is an elector, (and was also a contestant, having lost to the respondent) calls in question respondent's election on 16-6-91 in General Election to the Lok Sabha from Indore Constituency No. 37, inter alia on grounds of corrupt practice as detailed in paragraphs 7 to 17 of the petition.

2. The respondent filed I.A. No. 13/91 on 28-9-91, I.A. No. 4/92 on 27-6-92, and I.A. No. 8/92 on 9-7-92 under sec. 86 read with sec. 81(3), 82 and 83 of the Act and under Or. 7 r. 11 C.P.C. and sec. 151 C.P.C., raising preliminary objections as to the maintainability of the election petition and prayed for its dismissal in limine, with costs.

3. The petitioner by his reply filed on 11-10-91 to the aforesaid application I.A. (No. 13/91) has controverted the allegations made by the respondent and disputing the legal position, prayed for rejecting the preliminary objections as not tenable in law. It may be noted that the other applications I.A. No. 4/92 and I.A. No. 8/92 have not been replied to by the petitioner.

4. The following preliminary objections as to the maintainability of the petition have been raised by the respondent and argued by the parties :—

- The affidavit as sworn and filed by the petitioner alongwith the petition is not in accordance with sec. 83 of the Act and rule 94-A of Rules and prescribed form 25 of the Conduct of Election Rules 1961 (for short 'the Rules').
- The verification is not in accordance with rule 9 of the Election Petition Rules as framed by this court it contravenes rules 4, 5, 7 and 15 of the High Court Rules and Orders.
- The copy of the petition as served and supplied to the respondent in view of certain omissions therein,

cannot be said to be a 'true copy' within the meaning of sec. 81(3) of the Act.

(iv) Copy of the petition as served on respondent no. 1 does not comply with requirements of sec. 81(3) of the Act, in so far the affidavit which is an integral part of the petition, does not bear any endorsement, by the officer administering oath to the petitioner. There is no mention of the date and place of administering oath attesting the affidavit. It cannot therefore, be termed as 'true copy' of the affidavit.

(v) For want of the aforesaid necessary details in the affidavit as supplied to and served on the respondent, contravenes sec. 81(3) of the Act, and is fatal to the maintainability of the election petition. It may be noted that an objection as regards presentation of the petition before the Additional Registrar of this Court, has been abandoned by Shri Maheshwari vide order sheet dated 10-7-1992. When he also placed on record, copy of the petition as served on the respondent.

5. One of the objections taken by the respondent in I.A. No. 13/91, filed on 28-9-91, is that page no. 28 was not included in the copy of the petition as served on her. The petitioner had controverted this allegation in his reply dated 11-10-91. It may be noted that copy of the petition as filed by the respondent on 10-7-92 does contain page No. 28 of the petition. Since the main thrust of Shri Maheshwari's argument is directed against the verifications as appended to the petition and the affidavit sworn in support thereof, it would not be out of place to reproduce the same, as it would help appreciating the contentions advanced by the learned counsel.

"VERIFICATION"

I, Lalit Jain s/o Shri Keshrimal Jain, do hereby verify that the contents in paragraphs Nos. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16; 17; 19; 20 and 21 are true according to my personal knowledge and the contents in paragraphs no. 6, 18, and 22 are true according to the legal advice and information received by me which I believe to be true; nothing stated therein is false and nothing has been suppressed.

Verified at Jabalpur this the 30th day of July, 1991.

Sd/-

DEPONENT."

Identified by :

Sd/- S. C. Trivedi, Advocate.

Compared and contrasted, the extracted relevant part of the affidavit, reads as follows :

".....and the particulars of such corrupt practice given in paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of the said petition are true to my information."

6. At one stage the averments have been verified as true to personal knowledge while the same averment relating to corrupt practice have been verified as true on petitioner's information. In the affidavit sworn in support of the corrupt practice as alleged in the petition, there is an apparent inconsistency.

7. It is an admitted position that the proviso to sub sec. (1) of sec. 83 of the Act, lays down that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegations of such corrupt practice. Rule 94-A of the Rules says that the affidavit referred to in proviso to sub-sec. (1) of sec. 83 of the Act, shall be in form 25.

8. Shri Mathur, however, maintained that the petitioner has complied with the requirements of law.

9. Section 83 of the Act deals with contents of the petition. The proviso to clause (a) of sub-sec. (1) of sec. 83 of the Act clearly provides that where the petitioner alleges corrupt practices the petition shall also be accompanied by an affidavit in support of the allegations of such corrupt practice and the particulars thereof. Rule 94-A of the Election Rules, 1961 prescribes Form 25 for swearing such affidavit.

10. It is no longer *Res integra* that such affidavit in support of allegations of corrupt practice forms an integral part of the petition itself.

11. A Division Bench of this Court in *Gangaram Bandit vs. Bashmi Parhar* (A.I.F. 1987 M.P. 208) has following *M. Karunanidhi vs. H. V. Handa* (A.I.R. 1983 SO 558) and *M. Kamulam vs. Dr. V. A. Said Mohd* (AIR 1978 SC 840) has categorically held that such an affidavit in support of allegations of corrupt practice forms an integral part of the election petition.

12. Sec. 81(3) mandates every election petition shall be accompanied by as many as copies thereof as there are respondents and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition. The material facts relating to any corrupt practice made in a given case, be contained in a document and the petitioner without pleading the material facts, contained in such document, may refer to the document itself; but when such a reference is made in the election petition a copy of the document must be supplied. Sec. 81(3) of the Act, speaks of copies of petition and provides for attestation of every copy as true copy of the petition.

13. It cannot be disputed that serious charges of corrupt practice have been made by the petitioner as contained in paras 15 and 16 of the petition running into numerous sub paras. As has been pointed out by the Supreme Court in *F. A. Sana etc. etc. vs. Singora and ors* (AIR 1991 S.C. 1557) such an allegation involving corrupt practice must be viewed very seriously. In face of these allegations of corrupt practice an affidavit as contemplated by the proviso to sub-sec. (1) of sec. 83 of the Act forms an integral part of the election petition. The proviso requires that where the petitioner alleges any corrupt practice, the election petition shall also accompany by an affidavit in the prescribed form in accordance with rule 94-A in support of the allegations of such corrupt practices and the particulars thereof.

14. Shri Mathur senior Advocate appearing for the petitioner has urged that the rules of procedure should not be so stretch applied as to defect the cause of justice. Practice reliance upon the following decisions in *M/s. Shiva My. vs. Maung MO* (A.I.R. 1922 P.C. 249), *Raja Inderjeet vs. Amarsingh* (A.I.R. 1923 P.C. 135), *Owners and Parties vs. Fernando Lopez* (A.I.R. 1989 SC 2206), *Ganesh Trading Co. vs. Mojiram* (A.I.R. 1978 S.C. 484) and *Rajnarain vs. Smt. Indira Gandhi* (A.I.R. 1972 S.C. 1302), it was strenuously urged by the learned counsel that rules of procedure is a hand maid and not mistress of justice. As a general statement there can be no dispute with it, but it cannot be made a matter of universal application. A well grounded generalisation may be of some help but not a sweeping generalisation embracing a greater number and variety of unfounded inferences based on false analogies. Shri Mathur has employed an argument with some correctness indeed, but overriding its probative force. Except for the case of *Smt. Indira Gandhi* (AIR 1972 S.C. 1302) the other cases relied upon do not even relate to election matters. They deal with such questions as allowing an amendment or admitting additional evidence under Or. 41 r. 27 C.P.C. On the requirement of signature of a witness on his statement recorded on commission as required by rule 4 of Chapter XXII of the High Court Rules, framed by the Calcutta High Court, even in *Smt. Indira Gandhi's* case (supra) what the question before the Supreme Court was one of pleadings. It was in this context that the Supreme Court observed rules of pleadings are intended as aids for a fair trial for reaching a just decision.

What we are concerned with at the moment is the statutory requirement of an affidavit under sec. 83 of the Act, it is neither a question of construction of pleadings nor a question of admitting additional evidence of allowing an amendment in all such matters a liberal approach has been recommended but it cannot be applied out of context. The object and the purpose of the requirement of law should never be lost sight of. The fallacy of Shri Mathur's argument can best be demonstrated by taking for instance, a case of preventive detention, wherein the rules of procedure not only play a dominant role, but also of utmost importance.

16. The Supreme Court in *F.A. Sapa etc. vs. Singora and ors.* (A.I.R. 1991 S.C. 1557), which Shri Mathur has also referred to and relied upon has observed as follows :

"It is fairly well settled that our election law being statutory in character must be strictly complied with since an election petition is not guided by ever charging common law principles of justice and notices of equity. Being statutory in character it is essential that it must conform to the requirements of our election law."

In view of the foregoing discussion, the liberality of approach in such matters as requirements of verification of petition and affidavit in support of corrupt practice, as canvassed by Shri Mathur, cannot be accepted.

17. The importance of verification of an affidavit is to test the genuineness and authenticity of allegations and also to make the deponent responsible for such allegations, as held by the Supreme Court in *A. N. K. Nambiar vs. Union of India* (A.I.R. 1970 SC. 652), in *Virendra Kumar Sakhelecha vs. Jagjivan* (A.I.R. 1974 SC 1957) the affidavit alongwith the election petition, which did not disclose the source of information in respect of the speeches alleged to have been made by the appellant, came up for consideration before the Supreme Court, vis-a-vis the Rules framed by this court alongwith form 25, and rule 94-A of the Election rules.

18. Shri Mathur, placing reliance on a decision of the Supreme Court in *Ziyaddin Bukhari vs. Brijmohan* (A.I.R. 1975 S.C. 1788) contended and rightly so that petition can only be dismissed for a substantial defect. But in the same case as has been noted by the court, in para 7 of the judgment, there was no defect at all in the form of the affidavit and the relevant issue was deemed to have been given up which is not the position obtaining in the case at hand.

19. In *Prabhu Narayan vs. A. K. Shrivastava* (A.I.R. 1975 S.C. 968) the only charge made in the petition was the charge of publication of the pamphlets and not their printing—dealing with this question the Supreme Court held as under:

"It is obvious that when sec. 123(4) speaks of publication it means distribution. Mere printing of the pamphlets would not fall under sec. 123(4). Therefore the failure to give particulars of the printing cannot lead to the dismissal of the petition. Nor could evidence regarding it be shut out. The proviso to sec. 83(1) lays down that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. It does not say that the allegation of corrupt practice and particulars thereof should be given in the affidavit. The election petition contains the allegation of corrupt practices and particulars thereof. That this is the intention of the legislature is also clear from a perusal of form 25, which is the one prescribed under rule 94-A of the Conduct of Elections Rules. The affidavit filed in support of the election petition is in accordance with the form."

Referring to Virendra Kumar's case the Supreme Court proceeded to observe as under;

"However, in that case, a failure to conform to rule 9 and rule 7 of the M.P. High Court rules was not held to be fatal to the election petition. What was said was that it would be helpful in assessing the value of the evidence. But that purpose is served by the allegations in the election petition itself. Moreover, it appears to us that the provisions of rule 9 of the M. P. High Court rules regarding the election petitions framed by the M.P. High Court by reference to rule 7 of the M.P. High Court rules found in chapter III regarding affidavits cannot be made use of for this purpose. The former set of rules are made under Art. 225 of the Constitution and cannot make any substantive law and the rules themselves on a perusal of them would show that they relate merely to procedural matters unlike rules made under sec. 122 of the Code of Civil Procedure."

Sapa's case (supra) relied upon by the petitioner has also held that Sakhelecha's case is not an authority for the proposition that failure to disclose the source on ground of information would result in dismissal of the petition under sec. 86(1) of the Act.

20. As has been pointed out by the Supreme Court after resume of the case law in Sapa's case (supra) it will have to be decided by the Court in each individual case whether the defect in the affidavit is curable or fatal?

"From the text of the relevant provisions of the R.P. Act, rule 94-A and Form 25 as well as Or. 6 rule 15 and Or. 19, Rule 3 of the Code and the resume of the case law discussed above it clearly emerges (i) a defect in the verification, if any can be cured, (ii) it is not essential that the verification clause at the foot of the petition or the affidavit accompanying the same should disclose the grounds or sources of information in regard to the averments of allegations which are based on information believed to be true, (iii) if the respondent desires better particulars in regard to such averments or allegations, he may call for the same in which case the petitioner may be required to supply the same and (iv) the defect in the affidavit in the prescribed form 25 can be cured unless the affidavit forms an integral part of the petition in which case the defect concerning material facts will have to be dealt with, subject to limitation under sec. 81(3) as indicated earlier. Similarly the court would have to decide in each individual case whether the schedule or annexure referred to in sec. 83(2) constitutes an integral part of the election petition or not, different considerations will follow in the case of the former as compared to those in the case of the later."

Further the Supreme Court has held :

"Therefore, even though ordinarily a defective verification can be cured and the failure to disclose the grounds or sources of information may not be fatal, failure to place them on record with promptitude may lend the court in a given case to doubt the veracity of the evidence ultimately tendered. If, however, the affidavit or the schedule or annexure form an integral part of the election petition itself, strict compliance would be insisted upon."

It is in the light that the affidavit as sworn and filed by the petitioner is required to be judged.

21. The defects in verification as noted above in the affidavit can also not be lightly brushed aside. They are simply irreconcilable. A fact rather basketful of facts stated to be true on personal knowledge of the petitioner, at one state

in the verification of the petition, stating the same facts as true on information, that took without disclosing the source thereof, in the verification to the affidavit sworn in support of corrupt practice, is highly incongruent.

22. In *Mithilesh Kumar Pandey vs. Baidyanath Yadav and ors.* (A.I.R. 1984 S.C. 305)—mistakes in copy of the petition supplied to elected candidate as regards names of persons through whom corrupt practices were alleged to have been committed by him and mistakes relating to omission of some names giving wrong names were held to be fatal and petition liable to be dismissed in limine.

23. Similarly in *Rajendrasingh vs. Smt. Usha Rani and ors.* (AIR 1984 SC 956) it has been held that if an election petitioner disregards the mandate contained in sec. 81(3) of the Act by filing incorrect copies, he takes the risk of the petition being dismissed in limine under sec. 86 of the Act. It is no part of the duty of the respondent to wade through the entire record in order to find out which is the correct copy. If out of the copies filed, the respondent's copy is found to be an incorrect one, it amounts to non-compliance of provisions of section 81(3) of the Act which is sufficient to entail a dismissal of the election petition.

24. The other objection as raised by the respondent is pertaining to the correctness of the true copy of affidavit sworn by the petitioner in support of allegations of corrupt practice. The copy as served on and supplied to the respondent, does not bear the endorsement as to who was the Officer, whether a magistrate, Notary public or Oath Commissioner, who attested the affidavit and where were it attested and on which date? A mere glance at the copy of the affidavit as served on the respondent, would go to show that it bears the following endorsement "attested true copy of petition" with signature of the petitioner in the margin. On the next page similar endorsement "attested true copy of petition" with signatures of the petitioner is there.

25. It would be seen that there is absolutely no reference either to the Oath Commissioner, the Magistrate or the Notary public who attested the affidavit the affidavit, nor the date and place of such attestation has been mentioned on the so called true copy as served on the respondent.

26. Shri Maheshwari therefore contended that it was incumbent upon the petitioner to have supplied a true copy of the affidavit bearing an endorsement as made by the Notary with the designation and found in the original with his designation. Absence of such endorsement on the true copy of the affidavit as furnished to the respondent, cannot be treated as inconsequential. It was emphasised that this affidavit being an integral part of the petition, sworn as it is in support of the allegations of the corrupt practice, the infirmity in the copy thereof, should not be overlooked. It was contended that in the circumstances, the respondent was not supplied or served with corrupt copy of the petition as contemplated by sec. 81(3) of the Act.

27. It may be noted that the correctness of the copy of the petition, as served on the respondent, and placed on record by him alongwith summons on 10-7-92, has not been disputed by the petitioner.

28. Shri Maheshwari learned counsel for the respondent referring to the following cases *Mithilesh Kumar Pandey vs. Baidyanath Yadav and ors.* (A.I.R. 1984 S.C. 305), *Rajendrasingh vs. Smt. Usharani and ors.* (A.I.R. 1984 S.C. 957) and *Sharif-ud-Din vs. Abdul Gani Lone* (A.I.R. 1980 S.C. 303) and *Smt. Sahodrabai Rai vs. Ramsingh Aharwar and ors.* (A.I.R. 1968 S.C. 1079), contended that for want of endorsement on the affidavit an integral part of the petition, amounts to non compliance of provisions of sec. 81(3) of the Act, which renders the petition as not maintainable.

29. Shri Mathur, learned counsel for the petitioner has also placed reliance upon *Mithilesh Kumar Pandey's* case and referred to para 15 thereof. He also invited attention to paras 7 and 10 of *Sapa's* case and contended that a defect in attestation of affidavit is not substantial defect.

30. Proviso to section 83 of the Act says that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. Rule 94-A of the Conduct of Elections Rules, 1951, further states that the affidavit referred to in the proviso to sub sec. (1) of sec. 83 shall be sworn before a magistrate of the first class or a Notary or a Commissioner of Oaths and shall be in Form 25. In the instant case the affidavit is not in the prescribed form (*K. C. Madhava Karup v. K. Muraleedharas*—A.I.R. 1991 Kerala 20). The copy of the affidavit does not disclose to by whom was it attested. All that it is mentioned is as quoted earlier "attested true copy of petition." It is not even indicated that the affidavit was solemnly affirmed by the petitioner in the presence of the concerned officer. Under rule 94A the affidavit should be attested by a magistrate of the first class or a Notary or a Commissioner of oaths. The non production of a proper affidavit is violation of sec. 83 of the Act. The election petition is not in proper form and that by itself is a ground for rejection of the same.

31. The Supreme Court considering the provisions of the Act and the Rule 94A and Form 25, and the case law on the point of supplying a true copy and reference to *Sahodra Bai's* case (A.I.R. 1968 S.C. 1079) and *Sasidharan's* case (A.I.R. 1990 S.C. 924) has held that if a document constitutes integral part of the petition it must satisfy the requirements of sec. 81(3) and failure in that behalf would be fatal. The affidavit in support of corrupt practice is indisputably an integral part of the election petition.

32. In the case at hand the affidavit as sworn by the petitioner in support of the allegations of corrupt practices being an integral part of the petition, has not been supplied to the respondent in its true form. Being an integral part of the petition, failure to comply with the requirement of sec. 81(3) of the Act, renders the petition liable to summary dismissal (see para 29 of *Sapa's* case—supra).

33. It was argued by Shri Maheshwari learned counsel for the respondent in its true form. Being an integral part of the made through the entire record in order to find out whether the copies supplied to him were corrupt one. In the absence of the endorsement of the Notary on the copy supplied to the respondent No. 1 it was not possible for him to know whether the affidavit was really sworn and if so before whom and on what date. In the circumstances, it cannot be held that the copy supplied to the returned candidate conforms to the requirement of section 81(3) of the Act (See A.I.R. 194 S.C. 956 *Rajendrasingh vs. Rajani's* case).

34. In view of the foregoing discussion, the objections raised by the respondent deserves to be upheld and is accordingly upheld. The omission in the copy of the affidavit as supplied and sworn, cannot be held to be inconsequential. There is no compliance of provisions of sec. 81(3) of the Act. The affidavit as served on the respondent does not even show that it was sworn before any Notary or magistrate. This petition deserves to be dismissed on that ground alone.

35. This petition is accordingly dismissed with costs. Counsel's fee Rs. 2500, if certified.

Sd/- V D GYANI, JUDGE

18-12-92

SCHEDULE OF COSTS

Particulars	Appellant	Respondent
	Applicant	Non-Applcant
	Rs. nP.	Rs. nP.
Court fee on Memo of Appeal and Application	26.00	10.50
Court fee on power of attorney	4.00	3.00
Court fee on exhibits
Court fee on process	2.00	..
Counsel's fee on Rs.	Certificate not filed	
Fee for preparation of		
Paper Book		
Total:—	33.00	15.50

